IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.538 OF 2005

Govind Tukaram Chavan & 9 ors. ... Appellants.
Versus.
Samim A.Soni & others. ... Respondents.

Shri Rakesh Kumar i/by M/s.Legal Vision for the Appellants.

Shri Anil Singh for the Respondents Nos.2 to 7.

CORAM : ABHAY S. OKA, J.

DATED : 3rd May, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The learned Counsel appearing for the Appellants states that in the Notice of Motion No.1259 of 2005, no relief was prayed for by the Appellants/ Plaintiffs save and except in respect of the structures which are in actual possession of the Appellants. He states that no relief was prayed for in respect of the open space or access and therefore no findings could have been recorded by the learned trial Judge as regards the passage and open space.

2. The learned Counsel appearing for the Respondents Nos.2 to 7 states that in the plaint relief is sought in respect of open space and access and there are averments made in the plaint in that behalf and , therefore, the learned trial Judge has dealt with the said aspect. He

submitted that the concerned Respondents have not preferred any appeal against the limited order of injunction passed by the learned trial Judge and they do not intend to prefer any appeal.

2. The learned trial Judge has protected the strcutures which are occupied by the Appellants. The learned Counsel for the Appellants has stated that no relief was prayed for in the Notice of Motion as regards the open space and the access. There is no reason to interfere with the impugned Judgment and order. The findings which are recorded by the learned trial Judge are only tentative findings for the limited purpose of considering the prayer for interim relief. If the Appellants have any cause of action as regards the open space and access, it is for the Appellants to take out appropriate proceedings. Subject to the observations made above, the Appeal is dismissed. It is needless to say that the learned trial Judge will decide such proceedings if taken out by the Appellants on its own merits without being influenced by the observations made in the impugned order.

3. Parties to act on authenticated copy of this order.

Judge.